IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CURTIS THOMAS	:	CIVIL ACTION
	:	
v.	:	
	:	
SANDI LARSON et al.	:	NO. 00-999

MEMORANDUM

Dalzell, J. February 27, 2001

Curtis Thomas claims that his former probation officer, his former counselor, and an individual who provided him with a drug test all violated his civil rights under 42 U.S.C. § 1983. We here consider those defendants' motions for summary judgment.

I. Background

A. Facts[1]

On July 7, 1997, Curtis Thomas appeared before the Honorable Thomas G. Gavin, a Judge of the Court of Common Pleas for Chester County, Pennsylvania. Judge Gavin found that Thomas had violated his parole[2], and revoked it. Judge Gavin

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[1]Given the nature of the plaintiff's allegations, it is important to set forth the facts of record at some length. The facts set forth below are not necessarily all undisputed; indeed, the parties differ regarding many details of the factual circumstances leading to the instant action. To the extent that any of these differences are material or relevant to the disposition of the defendants' motions, we will address them either in the text or margin here or in the analysis that follows.

[2]It appears that Thomas was on parole for at least five prior convictions, see Ex. I, Larson's Mot. for Summ J. (containing five orders signed by Judge Gavin on July 7, 1997, each with a different docket number). It would further appear that the July 7, 1997 hearing was not the first parole violation hearing for Thomas on these convictions, Ex. H, Larson's Mot. for Summ. J. (Transcript of February 19, 1998 hearing) at 4.

immediately re-paroled Thomas, placing him on the "Intensive Supervision Program", Ex. I, Larson's Mot. for Summ. J. (Judge Gavin's orders dated July 7, 1997). Defendant Sandi[3] Larson, then a Chester County probation/parole officer, was responsible for supervising Thomas. On July 7, 1997, Thomas signed a document setting forth the "General Rules for Probationers and Parolees", as well as the required fees, Ex. D, Larson's Mot. for Summ. J. The document stated that "[i]n the event that [the parolee] violate[s] any of these conditions, [the Chester County Adult Probation and Parole Department] has the authority to arrest you and to detain you". Thomas also signed an "Agreement by Probationer/Parolee" that he understood the conditions, agreed to abide by them, and understood the penalties involved, Ex. D, Larson's Mot. for Summ. J.

On February 19, 1998, Judge Gavin held another parole violation hearing for Thomas, on the ground that Thomas had continued to use illegal drugs, Ex. H, Larson's Mot. for Summ. J. (Tr. of Feb. 19, 1998 hr'g) at 1-4 (hereinafter "Tr. of Feb. 19, 1998 hr'g"). In that hearing, at which Sandi Larson testified, Thomas represented to the court, through counsel, that he had a "terrible problem", and that he was asking for "one more opportunity," Tr. of Feb. 19, 1998 hr'g at 5, and he also represented that about a week before the hearing he had entered an intensive outpatient program with "HELP Counseling" in West

[3]The Complaint spells her name as "Sandy", but this is her spelling.

Chester, Tr. of Feb. 19, 1998 hr'g at 4. Notwithstanding these representations, Judge Gavin said that he would revoke the outstanding paroles and recommit Thomas for the balance of his sentences[4]. After Judge Gavin made this statement, however, at Thomas's request the court engaged in a colloquy with him. Following this colloquy[5], Judge Gavin reconsidered his previously-stated decision to recommit Thomas, and said:

> You got your choice of taking your medicine today and going to prison today and participating in some programs and doing TAP and maybe getting out in four or five months time.
>
> Or, I'll accept your story one more time. You go and you finish this program that you're in, which means you finish in six weeks. If you come up dirty one time during the six weeks, if you miss one class during the six weeks, and if you don't go to work every day that your employer wants you to come, you will come back here and do every single day of the seventeen months; no parole, no nothing.

Tr. of Feb. 19, 1998 hr'g at 11-12.

Judge Gavin then declared a brief recess for Thomas to consider his options. After that recess, Thomas, through counsel, expressed concern that if a urine sample was taken from

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[4]This would apparently have been for a duration of sixteen months and fifteen days, Tr. of Feb. 19, 1998 hr'g at 11.

[5]During the colloquy, Thomas stated, inter alia, that "my drug use is not an everyday thing. Honest, it's not an everyday thing. I slip up some days. Some days I'm offered it, I turn it down. Sometimes I guess -- I guess I just break," Tr. of Feb. 19, 1998 hr'g at 8. Thomas went on to state that he was employed, that he was "making a great effort trying to do the right thing," and that he was "learning a lot" through the outpatient program. Tr. of Feb. 19, 1998 hr'g at 8-10.

him that day -- as Larson evidently wanted -- it would come up positive for marijuana, as he had used marijuana the previous Sunday[6]; in subsequent colloquy with the court, Thomas admitted to that drug use, Tr. of Feb. 19, 1998 hr'g at 13-14. Despite this admission, Judge Gavin permitted Thomas to take the proffered deal, reiterating that this was conditioned on "No dirty urines, doesn't miss one class with the counseling service, doesn't miss one eligible hour of work, and if he does fails [sic] to do any of these things he does every single day of the balance," Tr. of Feb. 19, 1998 hr'g at 14. Judge Gavin also required that Thomas report to Larson twice a week, on which occasions he would be tested for drug use, Tr. of Feb. 19, 1998 hr'g at 15. On February 19, 1998, Thomas and his counsel signed a document agreeing to the terms that Judge Gavin had orally imposed, Ex. C, Larson's Mot. for Summ. J.

The events of Monday, March 2, 1998 form the primary basis for this action. On that day, slightly less than two weeks after the February 19 hearing, Thomas reported to Larson at the Chester County probation department satellite office in Coatesville at about 3:00 p.m. Thomas provided a urine sample, which was physically witnessed by Probation Officer Anthony Venditti. Just after Thomas provided the urine sample, there was a commotion outside the probation office, and Thomas ran outside to see what had happened. Larson remained inside. When Thomas

[6]February 15, 1998.

returned to the office, Larson told him that his urine had tested[7] positive for cocaine.[8] Thomas immediately denied that this was possible, contending that he had not used any drugs.[9] Larson told Thomas that his positive test was in violation of the February 19 agreement, and that she would schedule a violation hearing with Judge Gavin. She then called the courthouse and got a hearing time for Thursday, March 5.

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[7]The probation officers use a "stick test" wherein an indicator stick is dipped in the urine and then subsequently read for results.

[8]There appears to be some dispute as to how exactly the test was administered. Larson maintains that Venditti tested the urine, Ex. A, Pl.'s Opp'n to Shinbaum's Mot. for Summ. J. (Dep. of Sandi Larson) at 19 (hereinafter "Dep. of Sandi Larson"), and at the subsequent hearing before Judge Gavin, Venditti testified that he tested the sample and that, in fact, the urine sample was never out of his sight, Ex. G, Larson's Mot. for Summ. J. (Tr. of Mar. 5, 1998 hr'g) at 3 (hereinafter Tr. of Mar. 5, 1998 hr'g). Venditti also signed the "Drug Test Confirmation" form as the "testing officer", Ex. A, Larson's Mot. for Summ. J. Larson also notes that another probation officer, Candy Whitehead, observed the test stick and found it to be positive, Dep. of Sandi Larson at 27.

On the other hand, Thomas maintains that Anthony Venditti accompanied him outside the clinic to investigate the commotion, and that Venditti and another probation officer ran after an individual who was involved in the fracas, Ex. F, Caron's Mot. for Summ. J. (Dep. of Curtis Thomas) at 63-64.

Moreover, Thomas claims that he tried to retrieve the test stick from the trash can, but that Larson prevented him from doing so, Dep. of Curtis Thomas at 65. Thomas recalls that the trash can was almost overflowing and that there were many test sticks in the trash, Dep. of Curtis Thomas at 76, and also that Larson told him there were too many germs in the trash, Dep. of Curtis Thomas at 77.

[9]According to Larson, Thomas stated that while he did drink alcohol over the weekend, he had not used drugs, Dep. of Sandi Larson at 23. Thomas denies making any such statement to Larson.

Thomas then left the probation office, and determined that he would seek another drug test that would show that he had not, in fact, been using cocaine. Using a pay phone and the Yellow Pages,[10] he determined that he could obtain a urine test at defendant Riverside/Brandywine[11], an entity located in Coatesville with which Thomas was familiar because he had been there for counseling some years before, Dep. of Curtis Thomas at 78-85. Thomas proceeded to Riverside/Brandywine on foot, stopping on the way at his cousin's house to borrow some money to pay for the anticipated $25 fee for the drug test, Dep. of Curtis Thomas at 78-81.[12] At Riverside/Brandywine, Thomas provided a urine sample that was witnessed by defendant Art Caron[13], a

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[10]The phone was located at a Shop Fresh grocery store; Thomas bought a bottle of spring water at the store, so that he would be able to produce more urine for the second test, since he had just urinated, Dep. of Curtis Thomas at 79-80, 83. Thomas first stated at his deposition that he "drank [the water] straight down", Dep. of Curtis Thomas at 83, but later said that he did not drink it all because the water was warm, Dep. of Curtis Thomas at 84-85 ("I didn't even drink it all because it was warm"), 86 ("I took a couple of sips on it").

[11]The record does not clarify whether this is the entity's formal name; however, it was so identified in the Complaint and in the parties' pleadings. It appears that Riverside/Brandywine is engaged, inter alia, in the treatment of substance abusers.

[12]Although it seems that the fee for a drug test at Riverside/Brandywine is indeed $25, Thomas never actually paid anything for the drug test: when he submitted his sample, the staff told him he'd pay when he got the results, but when he subsequently retrieved his results on June 11, 1998, he was not charged, Dep. of Curtis Thomas at 94-95.

[13]The Complaint spells this name "Karone", but we will use the correct spelling throughout this Memorandum.

therapist at Riverside/Brandywine.[14] After the sample was taken, it was sealed and placed in a plastic bag, and Riverside/ Brandywine personnel told Thomas that the results would be back from the lab in a week, Dep. of Curtis Thomas at 94-96.[15] Beverly Little, then the receptionist/secretary at Riverside/ Brandywine, says she recalls Curtis Thomas coming to Riverside/ Brandywine during the "late winter or early spring of 1998", demanding a drug test, Ex. G, Caron's Mot. for Summ. J. (Aff. of Beverly Little) ¶ 8 (hereinafter "Aff. of Beverly Little"). Little adds that Thomas "was loud and boisterous and accused Sandy Larson of the Chester County Probation Department of falsifying his drug test with her," Aff. of Beverly Little ¶ 9.

Thomas then caught a ride with a friend to West Chester, because he had a 5:00 p.m. appointment at the Help Counseling Center. When he arrived, he went to see defendant Valerie Shinbaum[16], his counselor, for a one-on-one session. Thomas had evidently commenced his treatment at the Help Counseling Center on February 12, 1998, Ex. I, Shinbaum's Mot. for Summ. J. ("consent to treatment" form signed by Thomas dated

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[14]Caron himself has no recollection in general of Curtis Thomas or in specific of having witnessed Thomas providing the urine sample on March 2, 1998, Ex. B, Pl.'s Opp'n to Shinbaum's Mot. for Summ. J. (Dep. of Art Caron) at 58 (hereinafter "Dep. of Art Caron").

[15]This disclosure "messed [Thomas's] head up", Dep. of Curtis Thomas at 94, apparently because he realized the test would come back after the scheduled violation hearing.

[16]The Complaint spells this name "Shimbaum", but we will use the correct spelling throughout this Memorandum.

"2/12/98"), and Help Counseling Center, Inc.[17] is a "division of Northwestern Human Services in Chester County," Ex. C, Pl.'s Resp. to Shinbaum's Mot. for Summ. J. at 9.[18] When Thomas began treatment on February 12, 1998, he signed a "General Consent Form and Re-Disclosure Statement," Ex. I, Shinbaum's Mot. for Summ. J., which authorized the release of certain information to "CC Probation Sandy Larson", to include "Presence in Treatment", "Prognosis", "Nature of the Project", "Progress in Treatment".

During his one-on-one session with Shinbaum on March 2, Thomas told her, inter alia, that Larson had told him that his urine was positive for cocaine and that Larson had scheduled a violation hearing. Thomas told Shinbaum that he felt that it wasn't fair, Dep. of Curtis Thomas at 104-07.[19] Shinbaum's treatment notes dated March 2, 1998 read:

> ["D" circled] Curtis upset today, violated @ PO, gave hot urine, will probably go to jail, per deal w/ PO & judge which he agreed to. Trying to be defensive, trying to get around going to jail. Worried, angry, anxious, sad. Reframing jail as opportunity for recovery if he wants to be serious about it.

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[17]Help Counseling Center is identified as "help counseling center, inc." on various of its own forms, e.g., Ex. I, Shinbaum's Mot. for Summ. J. (consent to treatment form).

[18]It further appears that his treatment at the Help Counseling Center was "Court stipulated", meaning required by the courts to come to treatment, Ex. C, Pl.'s Opp'n to Shinbaum's Mot. for Summ. J. (Dep. of Valerie Shinbaum) at 33 (hereinafter "Dep. of Valerie Shinbaum").

[19]Shinbaum does not now recall the specifics of their conversation, Dep. of Valerie Shinbaum at 37-40.

["A" circled] Trying to accept his consequences. Reported use over weekend.
["P" circled] Client will come to group and share about his consequences.

Ex. J, Shinbaum's Mot. for Summ. J.

After his one-on-one session with Shinbaum, Thomas left Help Counseling without attending the group session scheduled for that evening. He did not attend the group session scheduled for March 3, 1998, nor did he attend the individual and group appointments scheduled for the next day.[20]

On March 4, 1998, probation officer Candy Whitehead received a phone call from Valerie Shinbaum, Ex. E, Larson's Mot. for Summ. J. ("Supplemental Information Sheet" dated "3/4/98" detailing phone call). In this call, Shinbaum related that while Thomas had shown up for his individual session on March 2, he had left without attending his scheduled group session, and that he had failed to show up for his group session on March 3. Shinbaum further related that Thomas "claimed he went to Riverside on Monday & gave a urine because P.O. is conspiring against [him]," Ex. E, Larson's Mot. for Summ. J. On the same "Supplemental

[20]Ex. J, Shinbaum's Mot. for Summ. J. ("Case Consultations" form dated March 4, 1998, stating that Thomas "gave hot urine @ PO Monday, didn't stay for group on same day, didn't show for group next day"), Ex. J, Shinbaum's Mot. for Summ. J. (Treatment notes dated March 4, 1998 stating "Curtis was no-show for indiv. appt. and no-show for group appt."); Dep. of Curtis Thomas at 124-127 (stating that Thomas does not recall whether he attended those sessions or not), Dep. of Curtis Thomas at 285-290 (stating that Thomas was convinced that he was going to jail in the wake of the positive test, that he therefore wanted to clear up loose ends with his family employment, and that he therefore did not attend any counseling sessions after the individual session on March 2).

Information Sheet" relating this call, Candy Whitehead also wrote "[Telephone call] to Riverside - I spoke w/ Bev [Little, the receptionist at Riverside/Brandywine] - she didn't see Curt in there on Monday." Ex. E, Larson's Mot. for Summ. J. Shinbaum does recall making a call to the probation office to report that Thomas had missed a group session, Dep. of Valerie Shinbaum at 52, but she does not recall making a report about any "conspiracy" or Thomas's obtaining a drug test at Riverside/Brandywine, Dep. of Valerie Shinbaum at 52-54. In any event, Candy Whitehead relayed the information from the phone conversation to Sandi Larson.

On Thursday, March 5, 1998, the violation hearing was duly held before Judge Gavin. At that hearing, the Commonwealth reported to Judge Gavin that Thomas had tested positive, Tr. of Mar. 5, 1998 hr'g at 2. In response, Thomas told the Court that there had been a commotion at the office on the day he gave the sample, that he felt that there had been some mix-up[21], and that he had had a separate test done at "Brandywine Riverside", the results of which would be back on the following Monday, Tr. of Mar. 5, 1998 hr'g at 2. In rejoinder, Anthony Venditti testified that the urine was in his sight the entire time, and that the urine was not tampered with, Tr. of Mar. 5, 1998 hr'g at 3, and Larson reported to Judge Gavin that when confronted with the

[21]Thomas stated "I didn't do anything wrong. I don't know what -- I don't know how she got that mixed up or something." Tr. of Mar. 5, 1998 hr'g at 2.

positive test, Thomas stated that he had been drinking on the weekend[22], Tr. of Mar. 5, 1998 hr'g at 3. Larson went on to report to the court the substance of Shinbaum's phone call, to the effect that Thomas had missed group sessions on the 2nd and 3rd of March, and that Shinbaum had reported that Thomas had told her that the probation officer was conspiring against him, Tr. of Mar. 5, 1998 hr'g at 4. Finally, Larson reported to the court that Bev Little at Riverside/Brandywine had told Candy Whitehead that she (Little) hadn't seen Thomas at Riverside/Brandywine, Tr. of Mar. 5, 1998 hr'g at 4.

Thomas responded that he had in fact been at Riverside/Brandywine, Tr. of Mar. 5, 1998 hr'g at 4-5. After further colloquy, Judge Gavin recommitted Thomas for the balance of his remaining sentences, but then stated:

> You do the TAP [Treatment Alternative to Prison] program and we'll see what happens. You get a test result from [Riverside/Brandywine] that's contra to the test results we have and I'll consider that for whatever it's worth, because there will be a lot of questions as to how that happened and as to whose urine we are looking at, et cetera.

Tr. of Mar. 5, 1998 hr'g at 6. The orders dated March 5, 1998 recommitting Thomas to jail stated that the court would consider further parole after Thomas completed TAP, Ex. I, Larson's Mot. for Summ. J. On May 27, 1998, after Thomas completed TAP, Judge Larson released him from jail and again placed him on parole, Ex.

[22]As noted above, Thomas denies making any such statement.

CC, Larson's Mot. for Summ. J. (Aff. of the Honorable Thomas G. Gavin) ¶ 8, Ex. GG, Larson's Mot. for Summ. J. (certificate documenting Thomas's completion of the TAP program at Chester County Prison on May 27, 1998 and Judge Gavin's order dated May 27, 1998 granting Thomas parole effective May 28, 1998).

With respect to the Riverside/Brandywine drug test, the sample was tested by Medlab Clinical Testing, Inc., which generated its computerized report of the results on March 4, 1998.[23] The Medlab Report, Ex. B, Larson's Mot. for Summ. J., reports "Negative" results in a "5 panel drug screen", one of whose components was "cocaine", with a threshold of detection of "300 ng/ml". However, the report also states that "Specific gravity of submitted specimen is outside the normal range of 1.003 - 1.030."

Larson testified at her deposition that in the week after the hearing, she contacted Riverside/Brandywine and received the results of the test, Dep. of Sandi Larson at 68. She testified that Art Caron came to her office and provided her with the lab report giving the test results, Dep. of Sandi Larson at 68. She further testified that Caron told her that the results were abnormal (in that the specific gravity abnormality showed that the sample had been adulterated), that he (Caron) had

[23]Ex. B, Larson's Mot. for Summ. J. (Medlab Clinical Testing, Inc. report dated Mar. 4, 1998 of Curtis Thomas specimen dated Mar. 2, 1998) (hereinafter "Medlab Report"), Dep. of Art Caron at 30 (noting that March 4, 1998 date on report is the date of the report, and not the date it was received at Riverside/Brandywine).

not in fact witnessed Thomas providing the sample, and that in fact Thomas had gone into the bathroom alone to provide the sample, Dep. of Sandi Larson at 68-70. Larson does not recall whether she ever communicated to Judge Gavin that Thomas had obtained a test at Riverside/Brandywine or what the results of that test were, Dep. of Sandi Larson at 73-75. Larson also testified that it was her view that, as reported to her, the results of the test being abnormal and not witnessed meant to her that the results of the Riverside/Brandywine test were not in fact contrary to her test of Thomas's urine, Dep. of Sandi Larson at 79. For his part, Caron testified that he did not recall making any such report to Larson, and that doing so would have been "highly unusual" because of "confidentiality problems", Dep. of Art Caron at 14. On the other hand, he testified that given the "abnormal" flag on the Medlab Report, he would consider the "negative" report to be a "false negative", and that in prior conversations with Medlab about other samples that had an abnormal specific gravity, Medlab representatives had told him that this meant that someone had added something to the sample or that the tested individual was using "drug blocking pills", Dep. of Art Caron at 61-63. Caron also testified that it was his belief that confidentiality requirements do not apply to one who comes in simply seeking a drug test, as opposed to one who is under treatment, Dep. of Art Caron at 73-74.

Also with respect to the Riverside/Brandywine drug test results, on June 11, 1998, about two weeks after Judge Gavin

again placed him on parole, Thomas went to Riverside/Brandywine for the purpose of obtaining the test results and an apology from someone at Riverside/Brandywine, Dep. of Curtis Thomas at 315. On arriving, Thomas asked for Art Caron, and when Caron came to the front Thomas told him that he had been in for a drug test on March 5, and he wanted the results, Dep. of Curtis Thomas at 316. Caron told Thomas that because it had been such a long time, he wasn't sure what he could do, but it seemed to Thomas that Caron remembered him, Dep. of Curtis Thomas at 316-17[24]. According to Thomas, Caron first told him to call Medlab directly, but when Thomas did that, Medlab told him they could do nothing over the phone, but rather that Riverside/Brandywine would have to call them, Dep. of Curtis Thomas at 317-18, 330. When Thomas relayed this to Caron, Caron then told Thomas that he would see what he could do, but that he wasn't sure if he could help, Dep. of Curtis Thomas at 318, 330. Shortly thereafter, Caron departed the premises, got into his light blue pickup truck, and drove away, and the receptionist told Thomas that Caron had gone to West Chester, Dep. of Curtis Thomas at 318-19, 330. However, the receptionist then took Thomas's name, made a phone call, and in an hour she provided Thomas with a copy of the test results that had been faxed to Riverside/Brandywine, Dep. of Curtis Thomas at 319-21.

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[24]Caron has no recollection of Thomas's visit to Riverside/Brandywine in June 1998, Dep. of Art Caron at 18; as noted above, Caron has no recollection of any dealings with Thomas at all, Dep. of Art Caron at 9.

B. Procedural History

1. Thomas's Allegations

On February 24, 2000, Thomas filed the Complaint in this case against Sandi Larson, Valerie Shinbaum and Northwestern Human Services, and Art Caron and Riverside/Brandywine. The Complaint, which presented its allegations and claims in a single undifferentiated count, stated that it was "a civil rights case brought for the deprivation of 4th Amendment rights brought pursuant to 42 U.S.C. § 1983," Compl. ¶ 1.

The Complaint alleges that Larson lied to Judge Gavin in the March 5, 1998 hearing by, inter alia, reporting that Thomas had tested positive for cocaine, Compl. ¶ 1, and that she knew that her report was false, Compl. ¶ 23. Thomas also asserts that Shinbaum violated her duties of confidentiality by calling the probation office and reporting that Thomas had told her of his belief that the probation officers were trying to set him up, Compl. ¶ 22. Thomas further claims that Caron lied to Thomas when Thomas tried to get his test results after getting out of prison, in that Caron told Thomas that he couldn't help him, Compl. ¶ 28. Thomas goes on to allege that all the defendants conspired to keep the results of the Riverside/Brandywine test secret, Compl. ¶ 30[25], that they, through their cooperation with Larson, had violated Thomas's Fourth Amendment rights by causing

[25]At least this is our surmise; paragraph 30 of the Complaint reads "The defendants conspired to keep the results of plaintiffs' urine test [sic], which had been sent from Chem Lab, Inc., to Riverside, on March 4, 1998."

Judge Gavin to erroneously believe that Thomas had tested positive for drug use, when they knew that this was not true, Compl. ¶ 31, and that Caron and Shinbaum had violated Thomas's right to privacy and confidentiality, Compl. ¶ 32. The ad damnum clause states:

> [T]he plaintiff (a) demands judgement of all defendants for the deprivation of his 4th Amendment rights, and for conspiracy to deprive him of his 4th Amendment rights and for due process violations for false testimony by the affiant Larsen [sic], and for privacy and confidentiality breeches [sic], also 4th Amendment violations, by the defendants Shimbaum and Northwestern, together with costs, fees, attorneys fees, and such other relief as the court may deem appropriate, and (b) plaintiff also demands judgement of the defendants for civil conspiracy as a supplemental state claim and (c) of Shimbaum and Northwestern for a breach of confientiliaty [sic] as supplemental state claims.

2. Subsequent Motion Practice

By a July 25, 2000 Order, we denied Shinbaum's and Northwestern Human Services', and also Caron's and Riverside/Brandywine's Rule 12(b)(6) motions, holding that the allegations in the Complaint, though "thin", supported the § 1983, conspiracy, and breach of confidentiality claims that Thomas had made.

After the close of discovery, all defendants filed the motions for summary judgment now before us.

II. Analysis[26]

We will consider each defendant's (or set of defendants') motion for summary judgment in turn. Before doing so, we will briefly review the standards for liability under 42 U.S.C. § 1983. 42 U.S.C. § 1983 states that:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable . . . .

42 U.S.C. § 1983.

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[26]A summary judgment motion should only be granted if we conclude that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law," Fed. R. Civ. P. 56(c). In a motion for summary judgment, the moving party bears the burden of proving that no genuine issue of material fact is in dispute, see Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 585 n.10 (1986), and all evidence must be viewed in the light most favorable to the nonmoving party, see id. at 587. Once the moving party has carried its initial burden, then the nonmoving party "must come forward with 'specific facts showing there is a genuine issue for trial,'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)) (emphasis omitted); see also Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986) (holding that the nonmoving party must go beyond the pleadings to show that there is a genuine issue for trial).

The mere existence of some evidence in support of the nonmoving party will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). However, we must "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pennsylvania Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995).

In general, to recover under 42 U.S.C. § 1983, a plaintiff must first prove that he was deprived of "rights, privileges, or immunities secured by the Constitution and laws" of the United States. Baker v. McCollan, 443 U.S. 137, 140, 99 S. Ct. 2689, 2692 (1979); see also Parratt v. Taylor, 451 U.S. 527, 535, 101 S. Ct. 1908, 1913 (1981). Having demonstrated a deprivation of rights, a plaintiff must then prove that the defendant deprived him of these constitutional rights "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory." Monroe v. Pape, 365 U.S. 167, 171-88, 81 S. Ct. 473, 475-85 (1961).

A. Sandi Larson's Motion for Summary Judgment

1. Fourth Amendment Claims Under 42 U.S.C. § 1983

Larson maintains that the facts of record do not support Thomas's claims of Fourth Amendment violations because (a) Larson had probable cause to initiate the revocation hearing and (b) even if the record disclosed that Larson did lie at the hearing, a plaintiff may not recover damages under § 1983 for such conduct. In response, Thomas argues, inter alia, that there is a dispute of material fact about whether Larson is telling the truth about the positive urine test, and that the record of the March 5 hearing does not support any claim that Thomas would have been incarcerated irrespective of the drug test results.

Upon close consideration of the record, we conclude that even taking all inferences for the plaintiff, his claims

against Larson for Fourth Amendment violations cannot withstand summary judgment.

We first observe that, contrary to Thomas's arguments, Larson's alleged bad acts cannot be seen as a legal cause for Thomas incarceration following the March 5, 1998 hearing. As described at length above, Judge Gavin was about to re-commit Thomas at the February 19, 1998 hearing, but after a colloquy decided to give Thomas a final opportunity to remain out of jail, provided that he met a series of stringent conditions.

There is no dispute in the record that Thomas failed to meet at least one of these conditions: prior to the March 5, 1998 hearing, he missed several individual or group counseling appointments at Help Counseling. At the March 5, 1998 hearing, Judge Gavin heard testimony regarding three ways in which Thomas violated his agreement with the judge: (1) Thomas had tested positive for cocaine use, (2) Thomas had admitted to drinking, and (3) Thomas had missed several counseling appointments. Contrary to Thomas's claims, there is nothing in the transcript of the March 5, 1998 hearing to show that Judge Gavin was relying solely on the drinking or drug allegations in deciding to jail Thomas. While there is, to be sure, more discussion on the record about the drug use and drug testing, this is because Thomas presented to Judge Gavin his contentions that there was something wrong with the circumstances of his positive test and that he had submitted an independent test, Tr. of Mar. 5, 1998 hr'g at 3-6. Moreover, Judge Gavin asserts in an affidavit that

Thomas's failure to report to counseling by itself was sufficient to warrant his parole revocation, Ex. CC, Larson's Mot. for Summ. J. (Aff. of Hon. Thomas G. Gavin) ¶ 6 (hereinafter "Aff. of Hon.

Thomas G. Gavin"),[27] and there is nothing in the record to

[27]In his papers, Thomas contests the propriety of this affidavit, characterizing it as "unconventional", arguing that it "suspiciously" contradicts Judge Gavin's own March 5, 1998 order, and maintaining that it raises "a number of ethical and other concerns." Pl.'s Second Resp. to Larson's Mot. for Summ. J. at 4, 13. Thomas goes on to note that "Judge Gavin appears to be a known and intended witness who may wish to avoid cross examination," Pl.'s Second Resp. to Larson's Mot. for Summ. J. at 4. With respect to this, we note that Larson's self-executing disclosures list Judge Gavin as a witness, Ex. A, Larson's Reply Br. at 2, and therefore we can see no impropriety in Larson's provision of an affidavit from him as an exhibit to its motion for summary judgment.

We also note that we see no contradiction between the affidavit and Judge Gavin's statements in court on March 5, 1998. Here, it appears that Thomas focuses on the fact that at the hearing, Judge Gavin said he would consider an outside test "for whatever its [sic] worth," while in his affidavit he stated that he would not have accepted such a test because it was performed by an outside laboratory, Aff. of Hon. Thomas G. Gavin ¶ 5. Although these statements are not quite on all fours with each other, we note that Judge Gavin's in-court remark that he would consider the Riverside/Brandywine test "for whatever its worth" was immediately followed by his statement "because there will be a lot of questions as to how that happened and as to whose urine we are looking at, et cetera," Tr. of Mar. 5, 1998 hr'g at 6 (emphasis added). While Thomas argues that this statement shows that Judge Gavin had reservations about the test results Larson reported, the only reasonable reading of this language, especially given his use of the future tense, is that Judge Gavin had concerns about the outside test. Thus, his averment in the affidavit that he ultimately would not have accepted such an outside test does not contradict his in-court statements. For similar reasons, we cannot accept Thomas's claim that Judge Gavin at the March 5 hearing "suspected that something was going on", Pl.'s First Resp. to Larson's Mot. for Summ. J. at 5.

A note on citation is appropriate at this juncture. We have above cited to the plaintiff's "second" and "first" responses to Larson's motion for summary judgment. While discovery was still ongoing, Larson filed a motion for summary judgment, to which Thomas responded, that Larson ultimately withdrew in favor of filing a more comprehensive motion after the close of discovery. That later motion is what we consider here. Many of the arguments in the present motion for summary judgment are identical to those presented in the earlier one, and Thomas's response to the instant motion incorporated by reference his response to the earlier motion. We therefore identify that

(continued...)

challenge this assertion.

Therefore, even if the record could permit a jury to conclude that Larson engaged in wrongdoing with respect to the sample[28], and that she lied to Judge Gavin about Thomas's admission of drinking, these actions would not amount to legal cause of Thomas's loss of liberty, which would have in any event been ensured by Thomas's failure to attend counseling sessions, as Judge Gavin had plainly required.

To the extent that Thomas argues that his failure to attend these sessions was spurred by his belief that he was going to jail on a violation, this sort of circular causation cannot support § 1983 liability here. There is no dispute that the decision not to attend the Help Counseling sessions on March 2, 3, and 4 was Thomas's alone -- no one prevented him from attending or told him not to go. We also note that these absences occurred at a time when Thomas, by his own theory of the case, should have been hopeful that the Riverside/Brandywine test would in fact exonerate him from the false accusations of drug use. Thus, we cannot accept as reasonable a claim that Thomas would at that time have been indifferent to adding additional violations of Judge Gavin's conditions to his record. We

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[27](...continued)
earlier response as the "first" response, and the response filed specifically in opposition to the instant motion for summary judgment is cited as the "second" response.

[28]As we discuss below, we find that the record does not in fact admit of this conclusion.

similarly cannot accept as reasonable an argument that Larson's alleged wrongdoing with the drug sample, if any, itself caused Thomas to miss the counseling sessions. Ultimately, then, Thomas's incarceration was not causally related to Larson's alleged bad acts, for the simple reason that he would have been jailed without them.[29]

Thomas's Fourth Amendment § 1983 claims also fail because, taking inferences for him, there is nothing in record that could lead a jury reasonably to conclude that Larson did not have probable cause to initiate the revocation of Thomas's parole.[30] Probable cause exists where there are "facts and circumstances sufficient to warrant a prudent [person] in believing that the [suspect] had committed or was committing an offense," United States v. Boynes, 149 F.3d 209, 211 (3d Cir. 1998) (internal quotation marks omitted) (quoting Sharrar v.

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[29]Thomas attempts to dismiss this line of reasoning as an "It doesn't matter anyway defense", which he refers to in his papers as "IDMAD". As detailed above, we do not find these contentions to be frivolous, and the question of whether the alleged behavior led to a deprivation of Constitutional rights is indeed the very first, and significant, step of an analysis of § 1983 claims.

Also with respect to this, we note that Thomas's admission to Larson of his drinking would constitute an independent ground for revocation of his parole. While Thomas now denies that he ever made such a statement to Larson, he did not contest Larson's statement at the March 5, 1998 hearing, Tr. of Mar. 5, 1998 hr'g; Aff. of Hon. Thomas G. Gavin ¶ 7.

[30]In an "appropriate case", we may find as a matter of law that probable cause did exist in a particular circumstance "if the evidence, viewed most favorably to Plaintiff, reasonably would not support a contrary factual finding," Sherwood v. Mulvihill, 113 F.3d 396, 401 (3d Cir. 1997).

Felsing, 128 F.3d 810, 817-18 (3d Cir. 1997)). Thus, here the question is whether Larson had before her facts and circumstances sufficient to support a belief that Thomas had violated the conditions of his parole. Plainly, if Larson had before her a urine test showing that Thomas was positive for cocaine, this would constitute such probable cause. Thomas's position is that the test was in fact negative, and that Larson's statements to Thomas (and others) and her testimony before Judge Gavin to the effect that the test was positive were lies. However, we observe that there is nothing in the record that would permit a jury reasonably to find that she was in fact lying about her understanding of the outcome of the test.

Naturally, there would appear to be a dispute of material fact over the question of whether Thomas had used drugs, in that he testified that he did not and the Medlab Report of a urine sample Thomas provided on March 2, 1998 had negative results for drugs.[31] But the question of whether Thomas actually

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[31]The parties also dispute the value of the Medlab Report in and of itself.

The defendants provided an expert report by forensic toxicologist George F. Jackson, Ph.D. in which he opined that because the specific gravity of the urine sample was not within the specified range (either higher or lower), the results of the drug screen done on that urine sample can not be relied upon to provide any conclusion about whether Thomas had been exposed to drugs. In response, the plaintiff offers the expert report of Lawrence J. Guzzardi, M.D., who opines that it is unlikely that Thomas had a true positive test within one hour of a true negative test, and that therefore one of the two tests (either Larson's or Medlab's) was erroneous. Dr. Guzzardi, after discussing the two test protocols, noting that 5% of the population has urine whose specific gravity is outside the limits

(continued...)

used drugs is not quite what is material to Thomas's § 1983 claims. As discussed above, it is his contention that Larson lied about the results, not that she was in some way mistaken. Even taking the evidence in the light favorable to Thomas, we cannot find that there is evidence here that would permit a jury reasonably to find that Larson lied about those results.

We first note that Thomas can point to no evidence from any other witness who saw the test stick that would show that it was not in fact a positive test for cocaine. According to Larson's testimony, both Anthony Venditti and Candy Whitehead also looked at the test strip and found it to be positive for cocaine; Venditti testified to this effect at the March 5, 1998 hearing, and Thomas apparently elected not to depose either Venditti or Whitehead.[32] Similarly, Thomas can point to no document or alleged statement of Larson that states in any way

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[31](...continued)
assigned by Medlab, and assuming that the Medlab sample had been an observed sample and had not been tampered with, concluded that "it is more probable that the first test [Larson's] was the erroneous test and that the second test was accurate", Ex. A, Pl.'s Second. Resp. to Larson's Mot. for Summ. J. at 1-2.

As we note in the text above, however, the applicable question here is not whether the first test was accurate, but whether Larson lied about it. Moreover, we observe as an aside that the comparative objective scientific validity or reliability of these two tests is not really the subject of this case. What would be more relevant to our discussions here is the question of the meaning that a reasonable drug counselor or probation officer -- not a toxicologist -- would ascribe to the test results. In any event, we need not reach this question now.

[32]At least, their depositions are not part of the record before us. Both Venditti and Whitehead were listed as witnesses in Larson's self-executing disclosures, Ex. A, Larson's Reply Br. at 2.

that the test was actually negative. In sum, the record is bereft of any direct evidence that would go to show that Larson lied about the test results she saw on the stick (or that Venditti so reported to her).

Absent direct evidence, Thomas must then seek to rely on indirect evidence that could give rise to an inference that Larson lied about the test outcome. In this vein, Thomas points to a bevy of actions and circumstances that he maintains show that Larson had lied and that she was attempting to cover-up that fact. For example, Thomas points to his own testimony that Larson stopped him from going into the trash can, which, as he noted, was overflowing and contained a number of test sticks, to retrieve his stick as demonstrating that Larson didn't want him to see the "real" results. Similarly, Thomas maintains that Larson's failure to relate the results of the Riverside/Brandywine test to Judge Gavin, either at the March 5 hearing or later, demonstrates that she had lied and knew that she would be in trouble if Judge Gavin got those results, because it would show she was lying. Thomas also argues that his release from incarceration after only eighty-five days, rather than after service of the entire sixteen months, shows that "[i]ts [sic] butt covering time" for the defendants, Pl.'s Second Resp. to Larson's Mot. for Summ. J. at 7. Thomas goes on to cite other evidence from the record in a like attempt to show that Larson's behavior, and that of her co-defendants, after the March 2 test shows that she was trying to cover for her original lie.

After reviewing these contentions[33], we conclude that none of this evidence would permit a jury reasonably to infer that Larson lied about the test. At root, any relationship between the acts or facts that Thomas points to and Larson's allegedly false statements about the positive test stem from a pre-existing conviction that Larson had in fact lied. Standing alone, without such an assumption, this evidence simply would not reasonably permit the conclusion that Larson lied. What we are left with is merely Thomas's conclusory speculation that because he didn't think that he used drugs that would cause the drug test to be positive for cocaine, Larson must be lying about the results.[34] This is not sufficient to permit such a claim to

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[33]We make no effort to canvass each of these items of evidence, nor do we find that such an attempt would be efficient or educative.

In this regard, we observe that plaintiff's responses to the various motions for summary judgment fail, in large part, to provide specific citations to the record in support of the arguments therein. As Judge Posner has memorably observed, "Judges are not like pigs, hunting for truffles buried in briefs," United States v. Dunkel, 927 F.2d 955, 956 (7th Cir. 1991).

[34]Likewise, it is clear from the record that there is indeed a dispute of fact regarding the circumstances in which the test was given. Thomas claims that probation officer Venditti ran outside with Thomas immediately after Thomas stepped from the bathroom because of the commotion outside, and that Venditti then ran away from the building in pursuit of one of the individuals involved in the commotion. To the contrary, Venditti testified that he remained in the building and that the urine sample was in his sight at all relevant times. However, as with the other evidentiary points discussed above, this dispute simply is not material to the legal question of whether Larson was telling the truth about her perception of the result of the test, and neither does the dispute provide grounds by which a jury could reasonably find that Larson lied about the result.

survive summary judgment, and we conclude that on the evidentiary record before us that Larson did indeed have probable cause to schedule Thomas for a violation hearing as a result of the positive test.

With respect to Larson's other testimony at the March 5 hearing, Thomas contends that she attempted to mislead Judge Gavin by stating that Thomas had not, in fact, been to Riverside/Brandywine. A review of the hearing transcript belies this contention. Larson told Judge Gavin that "Candy" had called Riverside/Brandywine and spoken to "Bev Little" who said that she (Bev) hadn't seen Thomas there on March 2, Tr. of Mar. 5, 1998 hr'g at 4. As Thomas himself contends, this is only a recapitulation of the content of the note that Candy Whitehead had written memorializing the phone call. This therefore demonstrates that Larson was reporting to the Judge, in good faith, the truth as she then knew it. Thomas points to no evidence to suggest that Larson actually then knew, from some other source, that Thomas had in fact been to Riverside/Brandywine, and we observe that her statement actually falls far short of making an explicit claim that he had not been there.

Finally, with regard to his Fourth Amendment claim, Thomas avers that Larson wrongly suppressed the Medlab Report documenting the results of the Riverside/Brandywine test, which action had the effect of keeping Thomas in jail. We first note that Thomas does not identify anything in the record that would

go to show that Larson had knowledge of the Medlab Report prior to the hearing on March 5. While the report is dated March 4, 1998, there is no dispute over Art Caron's testimony that this date was when it was generated, and does not represent the date that it was received at Riverside/Brandywine, much less a date that it was received by the probation office or Larson. Therefore, there is nothing here to permit the conclusion that Larson withheld the report from Judge Gavin at the hearing.

Thomas also claims that Larson is culpable because she failed to apprise Judge Gavin of the results when she learned them early the next week, despite that Judge Gavin had shown an interest in the results at the hearing. However, as an initial matter, Thomas fails to make any showing on this record that Larson had any duty to disclose this information to Judge Gavin. While Judge Gavin did show a limited interest in results of the Riverside/Brandywine test, he directed Thomas, and no one else, to provide him with results, Tr. of Mar. 5, 1998 hr'g at 6. There is no dispute that this was a private test that Thomas got at his expense, and was in no way associated with or related to the probation office or any other government entity.[35]

Moreover, the question with respect to a Fourth Amendment § 1983 violation is whether probable cause existed, and a law officer is not mandated to do further investigation for exculpatory evidence, e.g., Ogborne v. Brown, No. 97-4374, 2000

[35]Indeed, that is why Thomas sought to get the test there, at a private organization.

WL 764928 at *8 (E.D. Pa. June 13, 2000) (so noting in the context of an individual's arrest on suspicion of a crime). Judge Gavin gave Larson no direction at the March 5, 1998 hearing that would have required her to deviate from this standard, and from Judge Gavin's language it is clear that he placed the responsibility for producing the results on Thomas, even though he knew that Thomas would be incarcerated.[36] Thus, there is no evidence to show that Larson had any duty to disclose the results of Thomas's private drug test to Judge Gavin. Further, we have Judge Gavin's undisputed affidavit, in which he maintains that his receipt of the Medlab Report would not have altered the outcome for Thomas, Aff. of Hon. Thomas G. Gavin ¶ 5.[37]

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[36]Moreover, there is no dispute that the results from Medlab were marked as "abnormal" because of the specific gravity reading of the sample. Again, the parties' expert reports differ on whether this "abnormal" reading makes the test reliable or not, but the question here is not what an expert toxicologist would think, but what a drug counselor or probation officer would think, and there is nothing here to dispute that Larson did not reasonably believe that the Medlab test results were in fact "abnormal" since that's what the result sheet reported.

[37]As noted above, Larson also maintains that she is immune from § 1983 claims arising from her testimony. This would indeed appear to be the case, e.g., Patterson v. Bd. of Probation & Parole, 851 F. Supp. 194, 197 (E.D. Pa. 1994) (noting that witnesses in criminal prosecutions are absolutely immune from § 1983 claims). To the extent that Thomas seeks to hold Larson liable for her testimony alone, such a claim is not legally founded. On the other hand, Larson's allegedly false testimony at the March 5, 1998 hearing here seems to be closely associated with other alleged acts of out-of-court wrongdoing (for example, the very act of scheduling the violation hearing), and so it is not clear if this immunity makes any material difference to our case. We note that while parole and probation officers receive quasi-judicial immunity for their adjudicative functions, they may obtain only qualified immunity for their other actions,

(continued...)

In sum, then, the evidence of record does not provide the basis by which a jury could reasonably find that Larson is liable under 42 U.S.C. § 1983 for violation of Thomas's Fourth Amendment rights.[38]

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[37](...continued)
Patterson, 851 F. Supp. at 197. In any event, as we have found above that the evidence does not support the Fourth Amendment claims against Larson, we need not rely on testimonial immunity in reaching our result here.

[38]Larson also argues that to the extent that Thomas's Complaint makes out a constitutional malicious prosecution allegation against her, such a claim similarly does not survive summary judgment. In our Circuit, a malicious prosecution claim may be presented as a Fourth Amendment claim under 42 U.S.C. § 1983, Gallo v. City of Philadelphia, 161 F.3d 217, 225 (3d Cir. 1998). In addition to a constitutional injury, an action under § 1983 for malicious prosecution must satisfy the common law elements of malicious prosecution: "(1) the defendant initiate a criminal proceeding; (2) which ends in plaintiff's favor; (3) which was initiated without probable cause; and (4) the defendant acts maliciously or for a purpose other than bringing the defendant to justice." Lee v. Mihalich, 847 F.2d 66, 69-70 (3d Cir. 1988), see also Hilferty v. Shipman, 91 F.3d 573, 579 (3d Cir. 1996); Torres v. McLaughlin, 966 F. Supp. 1353, 1361 n.7, rev'd on other grounds, 163 F.3d 169 (3d Cir. 1998) (noting that the precedent expressed in Lee, viewed in the light of Albright v. Oliver, 510 U.S. 266, 114 S. Ct. 807 (1994), shows that the common law elements of malicious prosecution must be shown in addition to the Fourth Amendment seizure).

In our present circumstances, however, it is clear that Thomas cannot meet these elements, since it is undisputed that the proceeding in question -- namely the March 5, 1998 hearing before Judge Gavin -- did not end in Thomas's favor, but instead resulted in his incarceration. Thomas argues that it did in fact terminate in his favor, since he was released from prison after 85 days instead of 16 months, but this contention does not present a dispute of fact that would permit a jury reasonably to conclude that the March 5, 1998 hearing ended in Thomas's favor, since his subsequent incarceration is undisputed, and the possibility of earlier release, contingent on the completion of the TAP program, was specifically contemplated by Judge Gavin's statements on the record and orders.

2. Due Process Claims Under 42 U.S.C. § 1983

Thomas also claims that Larson's actions violated the standards of substantive due process.[39] We note that in our Circuit, "the substantive component of the Due Process Clause can only be violated by governmental employees when their conduct amounts to an abuse of official power that 'shocks the conscience'", Fagan v. City of Vineland, 22 F.3d 1296, 1303 (3d Cir. 1994), see also Nicini v. Morra, 212 F.3d 798, 809-10 (3d Cir. 2000) (noting that substantive due process liability "attaches only to executive action that is so ill-conceived or malicious that it shocks the conscience" (internal quotation marks omitted)).[40] "The 'exact degree of wrongfulness necessary to reach the conscience-shocking level depends upon the

[39]The Complaint does not specify whether it is substantive or procedural due process violations for which Thomas seeks relief. As Larson argues, however, it is difficult to see how procedural due process was violated, since there is no dispute that Thomas was deprived of his liberty only after a hearing conducted before Judge Gavin on March 5. In his response to Larson's instant motion, Thomas makes no argument that procedural due process applies and directs all his argument to the question of whether a claim of substantive due process survives summary judgment. Further, none of Thomas's arguments go to challenge the sufficiency of the hearing itself, but rather the conduct of persons in it or related to it, namely our defendants here. We therefore will decline to engage in a discussion of procedural due process, a claim that the plaintiff has eschewed.

[40]But cf. Fuentes v. Wagner, 206 F.3d 335, 348 (3d Cir. 2000) (noting that the application of the "shocks the conscience" standard may be limited to certain classes of claims under substantive due process). With respect to this, we observe that neither party has argued that the "shocks the conscience" standard does not obtain in our circumstances here, and so we will apply that standard notwithstanding our Court of Appeals' caution in Fuentes.

circumstances of a particular case,'" Nicini, 212 F.3d at 810 (quoting Miller v. City of Philadelphia, 174 F.3d 368, 375 (3d Cir. 1999)) (some internal quotation marks omitted).

With respect to this issue, Larson moves for summary judgment on the ground that her conduct does not meet the "conscience-shocking" standard as a matter of law, while Thomas maintains that, at the least, this is a question for the jury. However, we observe that the actual conduct at issue here is the same as that which forms the basis for Thomas's Fourth Amendment claims -- in particular, Larson's alleged lying about the drug test to prompt the violation hearing, her lies about the test in the hearing, and her suppression of the evidence of the Medlab test results.[41] As we have found above that the evidence would not permit a reasonable jury to conclude that Larson violated Fourth Amendment reasonableness standards, we may immediately conclude a fortiori that the evidence does not support a claim that what she did could reasonably be found to shock the conscience.

We therefore will grant judgment to Larson on Thomas's substantive due process claims.

3. Conspiracy Claims Under 42 U.S.C. § 1983

"In order to prevail on a conspiracy claim under § 1983, a plaintiff must prove that persons acting under color of

[41]These are the acts identified in Thomas's response to Larson's motion, Pl.'s First Resp. to Larson's Mot. for Summ. J. at 12-13.

state law conspired to deprive him of a federally protected right," Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238, 254 (3d Cir. 1999). Larson seeks summary judgment on this claim, arguing that the record contains no evidence that shows that Larson conspired with anyone to deprive Thomas of his rights; Thomas, in turn, contends that the record is replete with evidence of the conspiracy.

We conclude that on the evidence of record, viewed in the light most favorable to the plaintiff, no jury could reasonably conclude that Larson was engaged in a conspiracy with the other defendants or others in violation of § 1983. In evaluating Larson's claim, we first note that Thomas's response to the motion for summary judgment fails to identify with specificity the evidence that vindicates his conspiracy claims. Instead, he argues that

> [a] simple reading of Larson's, Shimbaum's, and Caron's depositions . . . demonstrate[s] conclusively without needing to consult any further evidence, that they all testified falsely, that they all worked together to injure Thomas, and that they had no viable or justifiable reason to do so. . . . Given the facts elicited from Caron's, Shimbaum's, and Larson's own testimony it is obvious they conspired to deprive plaintiff of his federally guaranteed rights.

Pl.'s Second Resp. to Larson's Mot. for Summ. J. at 18. This sort of general argument simply will not suffice to survive a motion for summary judgment, particularly as it serves to refer the court to over 290 pages of deposition testimony.

From elsewhere in the plaintiff's papers[42], however, we can extract the various items of evidence that Thomas believes show the existence of a conspiracy[43] against him among Larson, Shinbaum, and Caron:[44]

- The phone message from Shinbaum taken by Candy Whitehead shows that Shinbaum was trying to warn Larson that Thomas was getting an outside test, and that Thomas suspected Larson of conspiring against him.

- "[I]t is quite telling" that Shinbaum's phone message failed to relate to Larson that Thomas had told her (Shinbaum) that he had been drinking, because unless Shinbaum was cooperating with Larson to fabricate such a statement, she would have related it to Larson, and therefore this shows that Larson and Shinbaum made

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[42]For example, in the statements of fact Thomas sets forth.

[43]The facts listed below, along with the inferences that plaintiff wishes to draw from them, are taken from Plaintiff's First Response to Larson's Motion for Summary Judgment at 2-6, and his Second Response at 2-12.

[44]As noted above, an individual may be liable for a § 1983 conspiracy only if he acts under color of state law. As we will discuss more below, there are questions here as to whether Shinbaum, Northwest Human Services, Caron, and Riverside/Brandywine are state actors. However, as we noted in our July 25, 2000 order, it is well-established that an individual who conspires with a government official to violate another's constitutional rights may be liable for such acts under § 1983. e.g., 1 Sheldon H. Nahmod, Civil Rights and Civil Liberties Litigation § 2:17 at 2-69 (4th ed. 1999); see also Pl.'s Resp. to Shinbaum's Mot. for Summ. J. at 6 ("If you play footsies with a government official you become cloaked in his or her shroud."). Therefore, the question of whether the non-government employee defendants are state actors does not arise in the context of Thomas's § 1983 conspiracy claims, since the very evidence that would go to show a § 1983 conspiracy would equally implicate the defendants as state actors for the purposes of the conspiracy claims.

up the alcohol use in order to deflect attention from the Riverside/Brandywine drug test.[45]

- Larson told Judge Gavin that Thomas hadn't been to Riverside/Brandywine,[46] even though she knew she had from Shinbaum's message.

- Despite receiving the Medlab test results, Larson disregarded them for no reason, except to avoid "serious trouble" from Judge Gavin.

- While Larson testified that Caron gave her the Medlab Report and explained it to her, Caron does not recall doing so and states that his doing so would have been irregular,[47] and that therefore

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[45]This appears to stem from a notation Shinbaum made in Thomas's "Discharge Summary" from Help Counseling to the effect that Thomas's last use of alcohol was on "3/1/98", Ex. EE, Larson's Mot. for Summ. J. Shinbaum testified that such information would have come from Thomas, Dep. of Valerie Shinbaum at 80, and Thomas only saw Shinbaum once after "3/1/98", at his March 2 individual session with her.

[46]As we noted above, this is not a proper representation of what Larson testified to.

[47]Plaintiff then suggests that Caron's responses seemed to show that he was "prepared" for the deposition in that there would have been an "confidentiality problem" if he had admitted to disclosing the test results, Pl.'s Second Resp. to Larson's Mot. for Summ. J. at 11. This statement, we feel, comes dangerously close to amounting to a suggestion by plaintiff's counsel that Caron's counsel suborned perjury by his client. We also note that this is not the only derogatory remark made by plaintiff's counsel about defense counsel in Thomas's papers, e.g., Pl.'s Second Resp. to Larson's Mot. for Summ. J. at 10-11 (suggesting that "some members of the bar" -- evidently a reference to defense counsel -- "can generate more brass than a foundry" and suggesting that "defendants' lawyers should be ordered to assist in the Florida recount as a sanction so that they may be visited with a sense of justice and learn to weigh equities and to count.") It is completely beyond this Court's comprehension what plaintiff's counsel seeks to accomplish by these swipes in a publically-filed document. It is one thing to accuse the defendants of lying, e.g., Pl.'s Second Resp. to Larson's Mem. of Law at 11 ("[Larson and Caron] are sitting down (continued...)

one or the other of Larson and Caron is perjuring him- or herself.[48]

- Judge Gavin's affidavit was procured in an attempt to protect Larson.

We cannot regard this evidence as sufficient to permit a jury, viewing the evidence in the light most favorable to Thomas, reasonably to conclude that there was a conspiracy to deprive Thomas of his civil rights. We again do not find it profitable to examine in detail each item of evidence to which Thomas points. Instead, we first observe that there is no direct evidence whatsoever of any agreement among the parties. To the extent that there is evidence of any communications among the alleged conspirators -- namely, Shinbaum's phone message to the probation office and Caron's disclosure of the Medlab test results to Larson -- these are not sufficient to permit a jury

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[47](...continued)
in a room planning perjured testimony.") and 12 ("These defendants are lying"), but it is quite another to take pot-shots at members of the bar and officers of the court. If plaintiff's counsel has charges to bring against defense counsel, he should do so in an appropriate forum, but he should desist from the practice of including in his briefs to this Court extraneous accusations of wrongdoing.

[48]Both respect to his argument on § 1983 conspiracy and elsewhere, Thomas makes much of this discrepancy between Caron's and Larson's testimony, and it cannot be denied that their statements are at best inconsistent. However, it remains unclear why the simple fact that two defendants made inconsistent statements, even about a relatively salient event such as Caron's disclosure of the Medlab results to Larson, necessarily goes to show the validity of Thomas's § 1983 claims. Thomas's papers do not go far in helping us to understand the logical connections he sees, and, indeed, we observe, for example, that this discord between Larson and Caron would seem to imply an absence of coordination, rather than conspiracy.

reasonably to infer the existence of a conspiracy. The evidence Thomas identifies to support his conspiracy claim[49], in sum, is not sufficient independently to disclose the existence of a conspiracy unless the existence of the conspiracy is posited in the first place.[50] There is no question for a jury to resolve with respect to a § 1983 conspiracy involving Larson or her co-defendants.

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[49]Thomas maintains that there are other documents generated by Larson and/or Shinbaum, not disclosed to him, that predate March 2, 1998 and that go to show that these two women felt that Thomas was destined to fail and that this goes to show that Larson and Shinbaum had a motive to conspire against him, e.g., Pl.'s First Resp. to Larson's Mot. for Summ. J. at 14, Pl.'s Second Resp. to Larson's Mot. for Summ. J. at 9. We note that Thomas never formally moved to compel the disclosure of these documents, despite evidently being aware of their existence as early as September 21 (the date of the First Response). In identifying these missing documents, Thomas cites to two instances in depositions at which he allegedly demanded their production, Pl.'s Second Resp. to Larson's Mot. for Summ. J. at 9, but an examination of these transcript pages does not clarify what exactly these documents were, nor does it show that Thomas was denied any documents that should have been disclosed, in that one of the files under discussion was Thomas's public court file, and the other was a file that Thomas's counsel had evidently examined and marked.

In any event, to the extent that the documents -- which, again, are not before us -- would show that Larson or Shinbaum believed that Thomas would likely fail, this is a far cry from proof that they subsequently conspired to throw him back in jail. Moreover, their doubts about Thomas were shared by Judge Gavin, who stated to Thomas at the February 19, 1998 hearing "I'm telling you right now, you're not going to make it. And I'm going to give you every single day [of the outstanding sentence]." Tr. of Feb. 19, 1998 hr'g at 14.

[50]As with any conspiracy theory, once you assume the existence of the conspiracy among the defendants here, the facts can be interpreted to "fit" the theory. But this is not how we consider proofs under the Rule 56 standards.

4. Qualified Immunity for Claims Under 42 U.S.C. § 1983

Larson also contends that she is protected by the doctrine of qualified immunity.

Public officials are "shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known," Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738 (1982); see also Anderson v. Creighton, 483 U.S. 635, 639, 107 S.Ct. 3034, 3039 (1987) (holding that the focus of qualified immunity is on the objective legal reasonableness of the actions taken by the public official). Qualified immunity may apply to "discretionary" acts, where "the judgments surrounding discretionary action almost inevitably are influenced by the decisionmaker's experiences, values, and emotions," Harlow, 457 U.S. at 816, 102 S. Ct. at 2737. Qualified immunity does not apply, however, to actions that are "ministerial", that is, that are established by regulation, e.g., Davis v. Scherer, 468 U.S. 183, 196 n.14, 104 S. Ct. 3012, 3020 n.14 (1984) (noting that the requirement to follow certain procedures before terminating employment is an example of a ministerial duty).[51]

[51]See also Ospina v. Department of Corrections, 769 F. Supp. 154, 156 (D. Del. 1991) (noting that ministerial duties are "routine procedures necessary to the administration of the law that call for little or no choice").

When a defendant raises a claim of qualified immunity in a § 1983 case, the first question we face is whether the plaintiff's allegations sufficiently establish the violation of a constitutional or statutory right, Gruenke v. Seip, 225 F.3d 290, 298 (3d Cir. 2000). If the allegations cross that threshold, we next inquire as to whether the right was "clearly established" such that a reasonable person would have been aware of it, Gruenke, 225 F.3d at 298. We then move to examine the defendants' conduct. As noted above, "an official will not be liable for allegedly unlawful conduct so long as his actions are objectively reasonable under current federal law," Gruenke, 225 F.3d at 299, and the focus is on "whether a reasonable public official would know that his or her specific conduct violated clearly established rights," Grant, 98 F.3d at 121. At the summary judgment stage, "this admittedly fact-intensive analysis must be conducted by viewing the facts alleged in the light most favorable to the plaintiff," Gruenke, 225 F.3d at 300. Parole officers like Sandi Larson may be granted qualified immunity for their discretionary activities, e.g., Presley v. Morrison, 950 F. Supp. 1298, 1304 (E.D. Pa. 1996).

As we have discussed and concluded at length above, on the evidence in the record Larson's actions were objectively reasonable, and therefore we find that her actions are immune from § 1983 claims as a matter of law.

B. Valerie Shinbaum and Northwestern Human Services' Motion for Summary Judgment

1. Northwestern Human Services' Status as a Defendant

Before examining the specific claims brought against these entities, we first look to the status of Northwestern Human Services. In its motion, Northwestern argues that it is not properly a party to this suit, since the evidence shows that Shinbaum was an employee of Help Counseling, which is a separately incorporated part of Northwestern, but that she was not an employee Northwestern itself. Thomas argues in response that Shinbaum was employed by Northwestern and that Northwestern is mentioned in Shinbaum's deposition.

While Northwestern Human Services is indeed mentioned in Shinbaum's deposition, it is in the context of Shinbaum's statement that Help Counseling Service, Inc. was a “division” of Northwestern. We also note that the documents of record that Shinbaum completed in the course of her treatment of Thomas bear the letterhead "help counseling center, inc.", e.g., Ex. EE, Larson's Mot. for Summ. J. (emphasis added). Thus, as Thomas has failed to point to anything in the record to show that Shinbaum was at the relevant times directly employed by Northwestern Human Services, and he has not made any showing that might make it proper essentially to pierce the corporate veil to hold Northwestern liable for the acts of one of its subsidiary's employees, we conclude that Northwestern's claims are meritorious and that it is not properly a defendant here.

Leaving this aside, we move to examine the specific claims that Thomas brings against Shinbaum[52].

2. Fourth Amendment Claims Under 42 U.S.C. § 1983

A preliminary question we must address in considering Shinbaum's liability here is whether she may be considered a "state actor" and therefore liable for § 1983 violations, since private conduct does not fall under § 1983, but rather "state action" is required to maintain a § 1983 suit, e.g., Abbott v. Latshaw, 164 F.3d 141, 146 (3d Cir. 1998).

The heart of a state action inquiry "is to discern if the defendant 'exercised power "possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law."'" Groman v. Town of Manalapan, 47 F.3d 628, 639 n.17 (3d Cir. 1995)(quoting West v. Adkins, 487 U.S. 42, 49 (1988) (in turn quoting United States v. Classic, 313 U.S. 299, 326 (1941))).

The Supreme Court has not developed a unitary approach to determine whether there has been state action, instead employing three discrete tests -- the "traditional exclusive government function" test, the "symbiotic relationship" test, and the "close nexus" test -- with the test to be used to be determined by the particular facts and circumstances of the case.

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[52]Our findings below with respect to Shinbaum would logically apply equally to Northwestern Human Service even if it was a proper defendant here, or to Help Counseling if it were a party to this suit.

In the "traditional exclusive government function" test, we ask whether "the private entity has exercised powers that are traditionally the exclusive prerogative of the state," Mark v. Borough of Hatboro, 51 F.3d 1137, 1142 (3d Cir. 1995) (quoting Blum v. Yaretsky, 457 U.S. 991, 1004-05, 102 S. Ct. 2777, 2786 (1982)) (emphasis added in Mark), and simply because a party is serving a public function does not suffice for such a showing, Rendell-Baker v. Kohn, 457 U.S. 830, 842, 102 S. Ct. 2764, 2772 (1982).

The "symbiotic relationship" test examines the relationship between the state and the alleged wrongdoer to discern whether there is a great degree of interdependence between the two. Under the test, a private party will be deemed a state actor if "[t]he State has so far insinuated itself into a position of interdependence [with the private party] that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment." Burton v. Wilmington Parking Auth., 365 U.S. 715, 725 (1961).

Subsequent jurisprudence has held that state regulation is not enough to render the actions of an institution to be those of a state, even if the regulation is pervasive, extensive, and detailed. Jackson v. Metropolitan Edison Co., 419 U.S. 345, 350, 358-59 (1974). Moreover, extensive financial assistance from the state does not turn a private actor into a state actor. Rendell-

Baker v. Kohn, 457 U.S. 830, 842-43 (1982)(rejecting a claim of state action based on the symbiotic relationship test where the institution in question received virtually all its funding from the state).

Finally, the "close nexus" test differs from the "symbiotic relationship" test in that it focuses on the connection between the state and the specific conduct that allegedly violated the plaintiff's civil rights, whereas the "symbiotic relationship" test focuses on the entire relationship between the state and the defendants. Under this test, the query is "whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself," Jackson, 419 U.S. at 351, 95 S. Ct. at 449; see also Brentwood Academy v. Tennessee Secondary Sch. Athletic Ass'n, No. 99-901, 2001 WL 137474 at *5 (U.S. Feb. 20, 2001)(discussing close nexus test); American Mfrs. Mut. Ins. Co. v. Sullivan, 119 S. Ct. 977, 986 (1999) ("Whether . . . a [sufficiently] close nexus exists . . . depends on whether the State has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State." (internal quotation marks omitted)). Action private entities take with the mere approval or acquiescence of the state does not constitute state action under this test, see American Mfrs., 119 S. Ct. at 986, and the purpose of this test is "to assure that constitutional standards are

invoked only when it can be said that the State is responsible for the specific conduct of which the plaintiff complains," Blum, 457 U.S. at 1004, 102 S. Ct. at 2786.

Shinbaum maintains that she is not a state actor and therefore cannot be liable for Thomas's claims under § 1983. Thomas responds that she is in fact a state actor. We will examine each of the three tests in turn. With respect to the "traditional exclusive government functions" test, it would seem clear that the provision of drug counseling services is not a traditional exclusive government function, and Thomas makes no argument to the contrary.

We similarly cannot find that Shinbaum is a state actor under the "symbiotic relationship" test. Although it would seem clear from the record that Help Counseling may be a government contractor, Thomas points to no evidence showing that it has formed an interdependence with the government. Similarly, although the evidence might be sufficient to show that Help Counseling received some funding from the government, or was subject to some regulation, these factors in and of themselves to not create a symbiotic relationship.

Under the "close nexus" test, Shinbaum's possible status as a state actor is a much closer case.[53] Our inquiry in the "close nexus" test is restricted to the relationship between

[53]We are somewhat hesitant to so find on the basis of the pleadings before us since, Thomas makes very little argument on this topic and indeed points to nothing in the record that would support a finding in his favor here.

the government and the private actor with respect to the specific conduct alleged. Here, the record is clear that Thomas was at Help Counseling as a part of his ongoing parole, and the disclosure consent forms he signed permitted Help Counseling to disclose many details of his treatment to his probation officer. Moreover, the record is clear that Shinbaum, his counselor, reported to the probation office, sua sponte, various facts about his treatment. The phone message from Shinbaum to the probation office shows that she reported on his absence from treatment, as well as some of the things he disclosed to her with respect to the drug test controversy. The treatment notes Shinbaum wrote show that she was aware of the nature of Thomas's deal with Judge Gavin, and in particular the requirements it placed on him. Thus, she would have been aware of the possible consequences to Thomas when she made her report to Larson, and this knowledge, combined with her acts, may be seen to establish a sufficiently close nexus between Shinbaum and the probation office to permit the imposition of liability on Shinbaum as a state actor. This is so because in reporting Thomas's failures to the probation office she could be said to have been, in essence, acting as an arm of the state with respect to his probation requirements.

We will therefore assume, without deciding, that Shinbaum was a state actor for the purposes of Thomas's § 1983 claims. However, even with this assumption, the evidence would not permit a jury reasonably to find Shinbaum liable under § 1983.

Thomas's claims against Shinbaum in this regard focus on her disclosures in the phone call to the probation office on March 4. We can find nothing in the evidence to connect any challenged disclosures to any violation of Thomas's rights. Thomas claims that Shinbaum's disclosure was culpable because she had no right to tell anyone else what Thomas told her in counseling. He does not, however, dispute that Shinbaum was authorized to disclose to the probation office the fact of Thomas's attendance or absence at required sessions.

To be specific, the phone message from Shinbaum to the probation office on March 4 disclosed five things: (1) that Thomas reported for individual counseling on March 2 but left before his group session, (2) that Thomas did not show up for his group session on March 3, (3) that Thomas was scheduled for group session that night, (4) Thomas went to Riverside/Brandywine to give a urine sample on Monday, and (5) he did so because he felt his probation officer was conspiring against him. Thomas argues only that disclosures numbers (4) and (5) above are impermissible, but does not challenge numbers (1) through (3).[54] Even assuming that they were in some way improper, disclosures (4) and (5) have nothing to do with Thomas's subsequent incarceration. Judge Gavin jailed Thomas because it was reported

[54]The consent forms Thomas signed clearly show that his "presence in treatment" can be disclosed; moreover, we observe that Judge Gavin's order of February 19, 1998, which required Thomas to be present for all his counseling appointments, would make little sense unless Help Counseling could legally disclose to the probation office whether or not he showed up.

to him that Thomas had tested positive for cocaine, had drunk alcohol, and had missed counseling appointments[55]. There is no evidence in the record to suggest that any of these findings is associated in any way with Shinbaum's allegedly improper disclosures, nor does Thomas make any argument on this point.

The record is bereft of evidence that would allow a jury reasonably to find that Shinbaum's acts led to any rights deprivation. We will therefore grant judgment to Shinbaum on the Fourth Amendment § 1983 claims.

3. Conspiracy Claims Under 42 U.S.C. § 1983

Our analysis of the § 1983 conspiracy claims against Shinbaum is identical to our discussion of Larson's motion for summary judgment, and so we will therefore grant judgment to Shinbaum on the § 1983 conspiracy claims.

C. Art Caron and Riverside/Brandywine's Motion for Summary Judgment

1. Fourth Amendment Claims Under 42 U.S.C. § 1983

As with Shinbaum, a threshold question here is whether Caron and Riverside/Brandywine may be considered state actors and therefore potentially liable under § 1983.

We have little difficulty in concluding that Caron and Riverside/Brandywine fall under neither the "traditional exclusive government function" test nor the "symbiotic

[55]As discussed above, the absences from the counseling appointments, standing alone, sufficed to jail him.

relationship" test; with respect to the latter we note that there is nothing in the record, nor does Thomas make any argument, to show the level of interdependence between Caron and Riverside/Brandywine, one the one hand, and the government, on the other, needed to show a symbiotic relationship. With respect to the "close nexus" test, we note that the only contact the evidence shows between Caron and Riverside/Brandywine and the government was Caron's disclosure to Larson of Thomas's drug test results. But this one-time disclosure -- which Thomas himself argues was improper in the first instance, and which does not appear to have been prompted by any standing relationship between the probation office and either Caron or Riverside/Brandywine with respect to Thomas -- is not sufficient to make a state actor out of Caron or Riverside/Brandywine. In particular, we find that there is nothing to show that the government either "exercised coercive power" or provided overt or covert encouragement of Caron and Riverside/Brandywine's actions as could be needed to characterize the latter's action as "state action."

Because no evidence supports the contention that Caron or Riverside/Brandywine was a state actor for the purposes of this action, we will grant them judgment as to Thomas's claims of a Fourth Amendment violation under § 1983.[56]

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[56]We also find that even if Caron and Riverside/Brandywine were considered state actors under the "close nexus" test, their actions here are causally unrelated to (continued...)

2. Conspiracy Claims Under 42 U.S.C. § 1983

Our analysis of the § 1983 conspiracy claims against Caron and Riverside/Brandywine is identical to our discussion of Larson's motion for summary judgment, and so we will therefore grant judgment to Caron and Riverside/Brandywine on the § 1983 conspiracy claims.

3. Plaintiff's Motion to Amend His Complaint

The original Complaint does not clearly raise a claim against Caron or Riverside/Brandywine for a violation of confidentiality, although in his briefing here Thomas refers repeatedly to Caron's disclosure of the Medlab test results to Larson as improper. In his response to Caron and Riverside/Brandywine's motion for summary judgment, however, Thomas argues that we "should also grant plaintiff leave to add a cause of action against Caron/Riverside for breach of confidentiality," Pl.'s Resp. to Caron's Mot. for Summ. J. at 4.

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[56](...continued)
any deprivation of Thomas's rights. To the extent that Thomas argues that Caron's disclosure of the test results to Larson amounted to a § 1983 violation, this cannot stand logical scrutiny, since such disclosure -- which occurred after Thomas was incarcerated -- placed Thomas in no different a position than he would have occupied had Caron not disclosed the results, which is what Thomas argues he should have done. To the extent that Thomas argues that Caron's behavior led to a several hour delay in the receipt of his test results when he went to Riverside/Brandywine on June 11, 1998, we cannot see how there is any constitutional dimension to such a claim. In this regard, we note that Thomas makes no claim that Caron should have gotten the results to Thomas in prison, nor does he argue that he tried unsuccessfully to obtain the results while in prison, but rather his claim is that Caron and Riverside/Brandywine's liability stems from the disclosure to Larson.

By an Order dated December 8, 2000, we invited the defendants to respond to this motion, and each defendant filed an opposition.

Fed. R. Civ. P. 15(a) states, in pertinent part, that "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires". This liberal philosophy notwithstanding, we may in our discretion deny leave to amend if "a plaintiff's delay in seeking amendment is undue, motivated by bad faith, or prejudicial to the opposing party," and we "may also refuse to allow an amendment that fails to state a cause of action", Adams v. Gould, Inc., 739 F.2d 858, 864 (3d Cir. 1984); see also Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 230 (1962) (noting that leave to amend should be granted absent "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment").

On this standard, we find first that Thomas delayed unduly in filing his motion. If he was not aware of it previously, Thomas knew of Caron's disclosure to Larson by at least September 19, 2000, the date of Larson's deposition, at which she testified that Caron had given her the results of the Medlab test. Thomas's two-month delay in seeking to amend his Complaint, particularly when such a motion was made in his

response to the defendant's summary judgment motion[57], is undoubtedly undue.

Moreover, Thomas's motion to amend is futile. As we have dismissed all of Thomas's federal claims, we will also decline to hear his supplemental state law claims, into which category the putative confidentiality claim against Caron and Riverside/Brandywine would fall. We will therefore deny Thomas's request for leave to amend his Complaint.[58]

D. Supplemental State Law Claims

As noted above, Thomas has brought "supplemental" state law civil conspiracy claims against all defendants, as well as breach of confidentiality claims against Shinbaum and Northwestern Human Services. Under 28 U.S.C. § 1367(c)(3), we may decline to exercise supplemental jurisdiction over state law claims if we have "dismissed all claims over which [we] ha[d] original jurisdiction." Before Congress adopted the supplemental

[57]That is, his request for leave to amend, instead of occurring while discovery was still ongoing, fell well after the completion of discovery and after the parties had filed their dispositive motions.

[58]As Larson notes in her response to Thomas's request to amend, Thomas's responses to the three summary judgment motions elsewhere contain statements to the effect that we should permit plaintiff to add still other defendants to this action. We do not regard these stray statements as proper motions before the court pursuant to Fed. R. Civ. P. 7(b)(1), and we will not consider them here. We note that although Thomas filed a reply to the defendants' opposition to his request for leave to amend, in that submission he only discusses the amendment to include the confidentiality claim against Caron and Riverside/Brandywine, and so it appears that he makes no contention that is other remarks in the text of his responses constitute motions to amend.

jurisdiction statute, the Supreme Court had held in United Mine Workers v. Gibbs that "if the federal claims are dismissed before trial, . . . the state claims should be dismissed as well." 383 U.S. 715, 726 (1966).[59]

We have found that the defendants' conduct with respect to Thomas does not amount to any violation of federal civil rights law. Thomas's remaining claims of civil conspiracy and breach of confidentiality are purely state law claims between these nondiverse parties, and are best suited for resolution in the Pennsylvania courts.

We therefore decline to exercise our jurisdiction under 28 U.S.C. § 1367(c).

[59] Similarly, it was considered the "rule within this Circuit . . . that once all claims with an independent basis of federal jurisdiction have been dismissed the case no longer belongs in federal court." Markowitz v. Northeast Land Co., 906 F.2d 100, 106 (3d Cir. 1990).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CURTIS THOMAS	:	CIVIL ACTION
	:	
v.	:	
	:	
SANDI LARSON et al.	:	NO. 00-999

ORDER

AND NOW, this 27th day of February, 2001, upon consideration of defendant Sandi Larson's motion for summary judgment (docket number 39), defendants Valerie Shinbaum and Northwestern Human Services' motion for summary judgment (docket number 38), and defendants Art Caron and Riverside/Brandywine's motion for summary judgment (docket number 40), and plaintiff's responses thereto, and defendant Sandi Larson's reply thereto, and for the reasons stated in the accompanying memorandum, it is hereby ORDERED that:

1. The defendants' motions for summary judgment are GRANTED;

2. JUDGMENT IS ENTERED in favor of all defendants and against plaintiff Curtis Thomas as to Thomas's federal claims under 42 U.S.C. § 1983;

3. The Court having declined to exercise its jurisdiction as to the remaining state law claims in the Complaint, they are DISMISSED WITHOUT PREJUDICE to their reassertion in state court;

4. Defendants Shinbaum and Northwestern Human Services' cross-claim against all co-defendants, and defendant Larson's cross-claim against all co-defendants are DISMISSED

WITHOUT PREJUDICE; and

5. The Clerk shall CLOSE this case statistically.

BY THE COURT:

_____
Stewart Dalzell, J.